

Exhibit 88

Deposition of Robert H. Topel (December 6, 2017) (excerpted)

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CUNG LE; NATHAN QUARRY, JON)
FITCH, on behalf of)
themselves and all others)
similarly situated,)
)
Plaintiffs,)
)
vs.) Case No.
) 2:15-cv-01045-RFB-(PAL)
)
ZUFFA, LLC, d/b/a Ultimate)
Fighting Championship and)
UFC,)
)
Defendant.)
)

HIGHLY CONFIDENTIAL

CONTINUED VIDEOTAPED DEPOSITION OF

ROBERT TOPEL, VOL. II

Washington, D.C.

December 6, 2017

8:39 a.m.

REPORTED BY:
Tina Alfaro, RPR, CRR, RMR
Job No. 52570

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

10 (Pages 300 to 303)

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 502, New York, NY 10123 1.800.642.1099

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">340</p> <p>1 now you've inserted firm. So no.</p> <p>2 Q. All right. Firms in a market, if I change</p> <p>3 the -- the -- all right. I'll reask the question</p> <p>4 this way. A market can have an infinite number --</p> <p>5 in order for a market to have a horizontal supply</p> <p>6 curve there would need to be an infinite number of</p> <p>7 equivalent workers at exactly the same wage; is</p> <p>8 that right?</p> <p>9 A. No.</p> <p>10 Q. What was wrong with that?</p> <p>11 A. Infinite. Does the -- the supply curve</p> <p>12 needs to be -- can be perfectly elastic over a</p> <p>13 relevant range where demand in this market is</p> <p>14 shifting and there will be no material effect on</p> <p>15 prices. I mean, there's not an infinite number of</p> <p>16 workers anywhere.</p> <p>17 Q. Okay. So a firm would need to have a</p> <p>18 substantial material number of equivalent</p> <p>19 workers -- I mean, a market would need to have a</p> <p>20 substantial number of equivalent workers at exactly</p> <p>21 the same wage in order for there to be a horizontal</p> <p>22 supply curve; is that right?</p> <p>23 A. I said over the relevant range.</p> <p>24 Q. Over the relevant --</p> <p>25 A. So if we -- if we have -- there needs to</p>	<p style="text-align: right;">342</p> <p>1 firm's here and there's other firms and I'm going</p> <p>2 to hire -- instead of trying to attract people to</p> <p>3 my taco stand I'm going to hire people from along</p> <p>4 the road between my firm and another firm and</p> <p>5 they're all uniformly distributed. I'm making up</p> <p>6 this model. And I'll get the same taco stand kind</p> <p>7 of thing on the input side. If I want to hire more</p> <p>8 I have to reach further down the road and it's</p> <p>9 costly to drive. So I'll increase the marginal</p> <p>10 price that I pay -- I'll have to increase the</p> <p>11 marginal price that I pay.</p> <p>12 Q. Okay. So let's take your taco stand</p> <p>13 example. You have to taco stand A on one side of</p> <p>14 the road and then a mile away you have taco stand</p> <p>15 B.</p> <p>16 A. Yeah.</p> <p>17 Q. Now let's say somebody puts a toll on that</p> <p>18 road and all of a sudden in order to get from taco</p> <p>19 stand A to taco stand B it costs a hundred dollars</p> <p>20 and before it used to cost zero dollars. All</p> <p>21 things equal, would that toll increase the mobility</p> <p>22 costs of workers?</p> <p>23 MR. WIDNELL: Objection, form.</p> <p>24 BY THE WITNESS:</p> <p>25 A. So now I'm -- just -- just so I'm clear,</p>
<p style="text-align: right;">341</p> <p>1 be enough to prevent the wage from rising when</p> <p>2 demand shifts.</p> <p>3 Q. All right.</p> <p>4 A. And enough depends on the circumstances.</p> <p>5 Q. Is it fair to say that when mobility of</p> <p>6 workers is -- becomes restricted or is costly firms</p> <p>7 in that market could obtain some monopsony power?</p> <p>8 A. Your statement is so broad and vague</p> <p>9 that -- you know, I'll come back to my taco stands.</p> <p>10 And there's some costs of going to the next taco</p> <p>11 stand so that people who live closest to my taco</p> <p>12 stand prefer my taco stand to the taco stand that's</p> <p>13 further away even though our tacos are in all other</p> <p>14 respects identical. That means that if I cut the</p> <p>15 price of my tacos more people come to me. If I</p> <p>16 raise the price of my tacos fewer people come to</p> <p>17 me. That is not a completely horizontal demand</p> <p>18 curve. So in that sense -- and that's the sense in</p> <p>19 which George is using it here in a lot of this</p> <p>20 discussion -- one might say that there's a degree</p> <p>21 of monopsony power if we define -- if we define</p> <p>22 monopsony power to mean that if I cut my price I</p> <p>23 sell more and if I raise my price I say monopsony</p> <p>24 power in that case. And you can do the same thing</p> <p>25 on the other side of the market. So, you know, my</p>	<p style="text-align: right;">343</p> <p>1 now I'm hiring workers for my taco stand?</p> <p>2 Q. Yes.</p> <p>3 A. So there's a toll that prevents people</p> <p>4 from the other side of town getting to my taco</p> <p>5 stand?</p> <p>6 Q. Yes, and vice-versa.</p> <p>7 A. Okay. So yeah, there's fewer people that</p> <p>8 I can hire from the other side of town.</p> <p>9 Q. So now as compared to a world with the</p> <p>10 hundred-dollar toll and the world without the</p> <p>11 hundred-dollar toll, the two taco stands in the</p> <p>12 world with the hundred-dollar toll have more</p> <p>13 monopsony power than the world without the</p> <p>14 hundred-dollar toll, correct?</p> <p>15 MR. WIDNELL: Objection, form.</p> <p>16 BY THE WITNESS:</p> <p>17 A. I think what you're trying to say is</p> <p>18 that -- let's say here's A and B taco stands and</p> <p>19 the middle of town is halfway in between, and then</p> <p>20 I build a wall, okay, the Berlin Wall there so</p> <p>21 people can't get across from -- from -- so people</p> <p>22 between halfway and my taco stand and the</p> <p>23 percentage -- there's nobody else in town -- can</p> <p>24 only work for my taco stand. They can't go work</p> <p>25 for the other taco stand.</p>

20 (Pages 340 to 343)

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 502, New York, NY 10123 1.800.642.1099

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">344</p> <p>1 Q. Correct. 2 A. Is that what we're saying? 3 Q. Yes. 4 A. Yeah. So these people have fewer options. 5 I got it. 6 Q. And when you compare the world with the Berlin Wall in your example in the world without the Berlin Wall, the firm with the Berlin Wall has more monopsony power, correct? 10 A. The firm with the -- the firm -- I -- I won't be competing as aggressively to get people from across the place where the border is now. So, you know, I don't know how things played out in the output market. I mean, I understand what you're trying to say and you're saying the same thing here, and you're saying the same thing that I said. There's a degree of monopsony power. You didn't need the wall. I already said there's a degree of what some people would call monopsony power there by the fact that it is -- it is costly to move from A to B. 22 Q. And -- 23 A. So if it became more costly to move from A to B, that degree of -- of control over price would increase a little bit.</p>	<p style="text-align: right;">346</p> <p>1 Q. So all things equal, the higher the mobility costs in the example the more monopsony power the firms in that example have, all things equal; is that right? 5 MR. WIDNELL: Objection, form. 6 BY THE WITNESS: 7 A. It was important that you said twice "in that example." So I agree. 9 Q. And in that example we're talking about taco stands, right? These aren't Taco Bell, right? It could be a small firm that has some degree of monopsony power; is that right? 13 A. Yes. Well, as the term -- as we're using the term. It's just a dangerous term on both sides of the market. 16 Q. Is it fair to say that one reason why non-Zuffa firms employ some of the challenged contractual provisions that we've talked about is to restrain the mobility of the fighters that work for them? 21 A. It's to do all the things we've discussed before that -- you know, to see to it that they get the returns on their investments and that their ability to manage a multi-bout career progression is not interfered with.</p>
<p style="text-align: right;">345</p> <p>1 Q. So all things equal, the higher the mobility costs in your example the higher the monopsony power of the firms, correct? 4 MR. WIDNELL: Objection, form. 5 BY THE WITNESS: 6 A. Yeah. It depends on how we make the mobility costs and things like that. It depends on what we do with the mobility costs. 9 Q. We raise the costs. So go back to my toll example. Assume that the Berlin Wall costs \$100 to get from one side to the other and now assume it costs a thousand dollars to get from one side to the other. As compared to the world where it costs a hundred dollars to the world where it costs a thousand dollars, the firms in the world where it costs a thousand dollars would have a higher degree of monopsony power than the -- all things equal, than the firms in the world where it costs a hundred dollars. 20 A. I think what you're trying to establish is that the people on my side of the wall have fewer places -- because there's only two places, have fewer places at which they can work and that affects the wage that I have to pay to get them to work for me, and I agree with that.</p>	<p style="text-align: right;">347</p> <p>1 Q. And one way in which they achieve those ends is by restricting the mobility of the workers, correct? 4 A. In the sense that I just used, yes. 5 Q. And so in that sense even these smaller promotions can use these contracts to gain some measure of monopsony power; is that right? 8 A. No.</p> <p style="text-align: right;">[REDACTED]</p>

21 (Pages 344 to 347)

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 502, New York, NY 10123 1.800.642.1099

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

1	MR. CRAMER: All right. I'd like to mark 2 as the next exhibit a piece of the testimony from 3 Scott Coker in this case. What exhibit? 4 THE REPORTER: 10. 5 (Topel Exhibit 10 was marked 6 as requested.) 7 BY MR. CRAMER: 8 Q. What you've just been handed is 9 Exhibit 10. 10 A. Yep. 11 Q. It is a portion of the transcript of the 12 deposition of Scott Coker that was taken August 13 3rd, 2017 and it was taken in this case. 14 A. This is the Bellator fellow? 15 Q. And Strike Force. He was at both. 16 A. Okay. 17 Q. Did you have an opportunity to review this 18 deposition transcript? 19 A. Not in its entirety. 20 Q. You read some of it? 21 A. Some of it, yeah. I believe so. 22 Q. Turn to page 245 of the transcript which 23 is on the third -- it's the third page of the 24 exhibit. Do you see that on the bottom right-hand 25 corner? 348	350
1	A. You said 245, right? 2 Q. Yes. 3 A. 245 is the bottom right of the second 4 page. 5 Q. Yes. 6 A. Okay. 7 Q. After the title page. 8 All right. I'm going to draw your 9 attention to the testimony beginning at line 3 on 10 page 245, and I'll read it into the record and then 11 we can discuss it. 349	351
1	2	Q. All right. You can put that aside. 3 Have you seen evidence that -- in the 4 record that certain MMA promotions other than 5 Zuffa, smaller MMA promotions have said that they 6 would abandon certain of the contractual provisions 7 if the UFC would? 8 A. That sounds like something that might get 9 you in antitrust trouble anyway, but the -- I 10 haven't seen statements to that effect, but I'm 11 sure you'll show me. 12 MR. CRAMER: Okay. All right. I'm going 13 to have the court reporter mark as the next exhibit 14 a series of e-mails. 15 (Topel Exhibit 11 was marked 16 as requested.) 17 BY MR. CRAMER: 18 Q. The court reporter has marked as 19 Exhibit 11 a two-page document bearing the Bates 20 range ZFL-1904802 through 4803, and I'd like to 21 draw your attention to the e-mail at the bottom of 22 the page from Michael Chiappetta to Anthony Evans 23 at the UFC. 24 A. Yes. 25 Q. And then I'm particularly talking about

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">352</p> <p>1 the run -- one at 4:43 p m. from Chiappetta who is 2 talking about a conversation he had with Bjorn 3 Rebney. Bjorn Rebney was the head of Bellator at 4 the time and this is dated September 25th, 2012. 5 And I'd like to turn your attention to the next 6 page where Chiappetta, who is a reporter, is 7 reporting a conversation that Chiappetta had with 8 Rebney to the UFC.</p> <p>9 A. Can I -- can I just read the rest of 10 this.</p> <p>11 Q. Please do.</p> <p>12 (Witness reviewing document.)</p> <p>13 BY THE WITNESS:</p> <p>14 A. Remind me who Mike is because you've only 15 got a Gmail address.</p> <p>16 Q. Mike Chiappetta is an MMA reporter. 17 Anthony Evans is an executive at the UFC.</p> <p>18 A. So he's conveying some conversation that 19 he had with somebody at Bellator; is that what he's 20 doing?</p> <p>21 Q. Correct. Chiappetta communicated with 22 Bjorn Rebney, who was the President of Bellator at 23 the time, and then he's communicating a 24 conversation that Chiappetta had with Rebney to the 25 UFC. And on the second page of the e-mail --</p>	<p style="text-align: right;">354</p> <p>1 these clauses is to protect the investments that 2 have already occurred. 3 Now, on the first page here it says that [REDACTED]</p> <p>9 is -- it's an equilibrium where this contract 10 restriction has not been used. It could be still 11 binding, but it hasn't been used. [REDACTED]</p> <p>16 Q. Is it your opinion that if the UFC has 17 never during -- had never during a right to match 18 period matched a rival's bid that that would mean 19 the right to match clause had no effect in the 20 marketplace?</p> <p>21 A. That was the implication that I was trying 22 to convey at the end of my answer. That doesn't 23 mean that it's not binding. It doesn't mean that 24 it doesn't have an effect. It's not -- it's not 25 put into the contracts for nothing. It serves a</p>
<p style="text-align: right;">353</p> <p>1 A. He says "Eventually"; is that sentence 2 you'd like me to read? [REDACTED]</p> <p>10 Q. Do you know whether Zuffa eliminated the 11 right to match clause in response to Rebney's 12 challenge?</p> <p>13 MR. WIDNELL: Objection, form. 14 BY THE WITNESS:</p> <p>15 A. Well, you know, I don't know if there was 16 an actual challenge. This is being relayed by a 17 reporter. We know how sometimes that can get 18 muddled. But I don't know if this is in -- this 19 sounds like it's in the context of a particular 20 transaction, but, you know, one wouldn't be 21 surprised if some competitor would say, hey, you've 22 invested a lot in all these folks, wouldn't you 23 like to get rid of this clause because then, you 24 know, it would give us greater access to the people 25 you've invested in. That's the point of having</p>	<p style="text-align: right;">355</p> <p>1 purpose. 2 Q. So even if the right to match clause has 3 never been, quote/unquote, used, it's still having 4 an effect in the marketplace, correct? 5 A. It could be having an effect in the 6 marketplace even if they've never had to invoke. 7 Q. And why is that? [REDACTED]</p> <p>17 Q. Sounds to me like that answer said the 18 right to match is not doing any work. How is the 19 right to match doing any work, procompetitive work 20 or anticompetitive work, economic work if Zuffa 21 would just outbid any potential rival? Why doesn't 22 Zuffa just get rid of the right to match, then, if 23 it knows it can just outbid any rival? 24 A. Well, we go through this in my report. [REDACTED]</p>

23 (Pages 352 to 355)

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 502, New York, NY 10123 1.800.642.1099

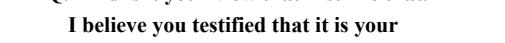
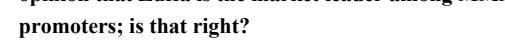
ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">356</p> <p>3 [REDACTED] 4 if it came down to, oh, why don't they just -- why 5 don't they just outbid, well, if Bellator makes its 6 best offer and it knows that Zuffa will match, 7 then, you know, the returns to making its best 8 offer aren't as high as otherwise. Now, take 9 that -- take away the right to match and you come 10 back to the example that I have in my report about 11 the holdup problem where you're more valuable to 12 Zuffa, the athlete knows it. So now you've got a 13 bilateral negotiation where there's no determinant 14 solution in economics except that it's going to be 15 somewhere in between and depends on the relative 16 intransigence of the two parties where you're going 17 to end up.</p> <p>18 Q. So you just said --</p> <p>19 A. Let me finish. So I said that the -- what 20 I've just described is the holdup problem that's in 21 my report that the right of first refusal is 22 designed to avoid.</p> <p>23 Q. One of the things you said is that if 24 Bellator makes its best bid during a UFC right to 25 match period the returns to Bellator to making that bid aren't as high as they would be without the</p>	<p style="text-align: right;">358</p> <p>4 [REDACTED] 5 different once the right to match period expires than during the right to match?</p> <p>6 A. They could be, though there's a question 7 of why Bellator make an offer in the right to match 8 period and they're gaining information about this 9 fighter from the fact that -- it's your 10 hypothetical. There's no contract between Zuffa 11 and the fighter a year after the end of his 12 contract. So you're -- Bellator's looking at that 13 at the end and saying, you know, winner's curse 14 might be operative here. So if we win what is it 15 that Zuffa knew about this fighter that we don't.</p> <p>16 Q. Well, assume that Zuffa made a bid and the 17 fighter didn't accept it.</p> <p>18 A. Okay.</p> <p>19 Q. I'll withdraw it. I'm going to move on.</p> <p>20 Would you agree with me that the conduct 21 engaged in by a firm without market power could 22 be -- could have anticompetitive effects when that 23 same conduct is engaged in by a firm with market 24 power?</p> <p>25 A. That's conceivable.</p>
<p style="text-align: right;">357</p> <p>1 right-to-match period in place; is that right?</p> <p>2 A. No. I just said given that the right to 3 match is there, Bellator has to make a calculation 4 that says here's what this athlete is worth to us 5 and let us assume -- and that's the assumption of 6 my example -- that the athlete is worth more 7 because of past investments to Zuffa than to 8 Bellator. So in making this offer you're not 9 certain of what the value to Zuffa is, but it's 10 very likely to be higher. So I put all the -- I 11 put all the numbers into a contract, the athlete 12 takes the contract to Zuffa, and Zuffa says done, 13 we'll pay that, and that's our right of first 14 refusal. And so we can invoke that.</p> <p>15 Q. So what effect, in your view, does that 16 have Bellator's incentives to make a bid?</p> <p>17 A. Bellator may have -- well, relative to 18 what because I don't -- if -- if it's -- I think we 19 went over this yesterday. Suppose we canceled the 20 right -- in one guy's contract, everybody else's 21 contract stays the same. I know we did this --</p> <p>22 Q. I think I can make it easier.</p> <p>23 A. I know we did this yesterday.</p> <p>24 Q. We did. I think I can just make it</p>	<p style="text-align: right;">359</p> <p>1 Q. How is that conceivable?</p> <p>2 A. Well, take the -- I mean, often in 3 contract disputes under section 2, like exclusive 4 dealing or loyalty discounts or something like 5 that, under certain prerestrictive conditions 6 things that have procompetitive effects can also 7 have anticompetitive effects if certain conditions 8 are satisfied.</p> <p>9 Q. Well, is bundling -- product bundling one 10 of those examples? Product bundles has many 11 procompetitive effects and when engaged in by a 12 firm without market power in any of the markets in 13 which the products they're bundling --</p> <p>14 MR. WIDNELL: Objection, form.</p> <p>15 BY MR. CRAMER:</p> <p>16 Q. I'll rephrase. Could bundling be one of 17 those examples where product bundling can be 18 anticompetitive when engaged in by a firm with 19 market power and procompetitive when engaged in by 20 a firm without market power?</p> <p>21 A. Yes, that's -- I mean, that and a myriad 22 of other examples under section 2.</p> <p>23 MR. WIDNELL: I just want to make clear, 24 you're asking for an economic opinion here, not a 25 legal opinion; is that right?</p>

24 (Pages 356 to 359)

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 502, New York, NY 10123 1.800.642.1099

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

	360		362
1	MR. CRAMER: Yes. I'm not asking for any	1	MR. WIDNELL: I just want to briefly note
2	legal opinion.	2	an objection for completeness.
3	MR. WIDNELL: Okay. I just want to	3	MR. CRAMER: Okay.
4	avoid --	4	BY MR. CRAMER:
5	THE WITNESS: Yep, that's fine.	5	Q. If there's something as you read through
6	MR. WIDNELL: -- making that objection	6	this document that you think is missing, please let
7	over and over.	7	me know. Okay?
8	THE REPORTER: Guys.	8	A. Okay. Sorry.
9	BY MR. CRAMER:	9	MR. WIDNELL: Just to be clear, it's not
10	Q. Turn to paragraph 43, please. All right.	10	in the document. The document was an attachment to
11	In paragraph 43 you quote a document. I believe	11	an e-mail.
12	it's the Deutsche -- one of the Deutsche Bank	12	MR. CRAMER: Oh, okay. Fair enough.
13	documents and I'm just looking for that. All	13	BY MR. CRAMER:
14	right. Towards the middle of paragraph 43 you say	14	Q. Fair to say in your report you don't cite
			any e-mail that attaches this document, right?
			A. Not that I'm aware of.
			Q. Okay.
			All right. On page 16 under the heading
			
			
			
			
			
6	Q. All right. I'm going to show you the	361	
7	document that Dr. Singer was quoting and have it		
8	marked as Exhibit 12.		
9	(Topel Exhibit 12 was marked		
10	as requested.)		
11	BY MR. CRAMER:		
12	Q. And I'll note that you cite this document		
13	in footnote 45.		
14	A. Okay.		Q. And is it your view that -- strike that.
15	Q. It is entitled "UFC/Zuffa, LLC DBA		I believe you testified that it is your
16	Ultimate Fighting Championship, Confidential		opinion that Zuffa is the market leader among MMA
17	Information Memorandum." It's dated October 2009		promoters; is that right?
18	and it was put out by Deutsche Bank. You've seen		A. Yes.
19	this document before, correct?		Q. And would you agree that that was the case
20	A. Yes.		since 2001?
21	Q. And you recognize that Zuffa management		A. I don't recall the circumstances
22	had input into this document, correct?		completely in 2001. The market was pretty small.
23	A. One would assume.		They might have been the largest producer back then.
24	Q. All right. Turn to page 16 internally to		Q. And that remained the case from the date
25	the document.		of this document, October 2009, to the present,
			correct?

25 (Pages 360 to 363)

DAVID FELDMAN WORLDWIDE, INC.
 450 Seventh Avenue - Ste 502, New York, NY 10123 1.800.642.1099

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

364	366
<p>1 A. Correct, assuming the truth of what I just 2 agreed to. Back in 2001 the market was pretty 3 small.</p> <p>4 Q. Okay. You can put that document aside for 5 the moment. I'm going to come back to it, but I'm 6 going to put it aside for the moment.</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 Q. Do you know who the audience of the 13 document was?</p> <p>14 A. Probably potential lenders.</p> <p>15 Q. And in putting together a document about 16 information relating to a company for potential 17 lenders one would need to be scrupulously accurate 18 about the information, correct?</p> <p>19 A. Well, I mean, if I were creating a 20 document I would try to be accurate, you know, but 21 I've seen the disclaimers in documents like this 22 that say, you know, not everything in a document -- 23 in our document is -- we can't verify that it's -- 24 the total reliability of these things. There's all 25 kinds of caveats. I assume this was done under</p>	<p>1 A. Yes.</p> <p>2 Q. And you note they acquired WFA and WEC in 3 2006, right?</p> <p>4 A. Yes.</p> <p>5 Q. And Pride in 2007; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. And Affliction in 2009; is that right?</p> <p>8 A. Yes.</p> <p>9 Q. And Strike Force in 2011; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know if they acquired any other 12 promoters?</p> <p>13 A. As I sit here I can't remember, but I 14 believe they have. I can't remember their names.</p> <p>15 Q. In the last sentence of paragraph 173 you 16 say "At the time of these acquisitions each of the 17 acquired MMA promoters was either too small to 18 appreciably change Zuffa's market share in either 19 the input or output market, was exiting the market, 20 or both"; do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. I'm trying to understand you provide two 23 different characterizations. One that the promoter 24 was too small to change Zuffa's market share in the 25 input or output market; in the other that it was</p>
365	367
<p>1 standard business practice. Deutsche Bank was 2 involved and they would have been doing -- creating 3 this in the way they would have created it for 4 another organization.</p> <p>5 Q. And they would attempt to be as accurate 6 as they possibly could be in this document, 7 correct?</p> <p>8 A. They -- they would be as accurate as it 9 was valuable to be. There's costs to being 10 accurate. I assume that they -- they did a good 11 job here.</p> <p>12 Q. It's fair to say that Deutsche Bank would 13 not want to make material misrepresentations in a 14 document like this to potential lenders, correct?</p> <p>15 A. I think that would be a bad idea.</p> <p>16 Q. All right. You can put that aside for the 17 moment.</p> <p>18 Turn to paragraph 173, please.</p> <p>19 A. Yes.</p> <p>20 Q. Here you are discussing the promoters that 21 Zuffa acquired?</p> <p>22 A. Yes.</p> <p>23 Q. And you observe that Zuffa acquired 24 several MMA promotions between 2006 and 2011; is 25 that right?</p>	<p>1 exiting the market at the time of the acquisition, 2 right?</p> <p>3 A. Yes. It's an either/or.</p> <p>4 Q. Either/or. So now I'm going to ask you 5 which explanations apply to which promotions.</p> <p>6 A. Oh, dear.</p> <p>7 Q. So WFA, did the acquisition of WFA 8 appreciably change Zuffa's market share in either 9 the input or output market?</p> <p>10 A. My recollection from our calculations 11 using Dr. Singer's data is that it did not.</p> <p>12 Q. Did the acquisition of WEC appreciably 13 change Zuffa's market share in either the input or 14 output market?</p> <p>15 A. Our calculations are on the input side and 16 my recollection is that it didn't affect any of 17 Dr. Singer's -- materially affect any of 18 Dr. Singer's share calculations.</p> <p>19 Q. It did not affect?</p> <p>20 A. I'm trying to remember, but that's my 21 recollection. It has to affect it, right, but it 22 didn't affect it much.</p> <p>23 Q. Right. You used the word "appreciably." 24 With respect to Pride, did that 25 appreciably change Zuffa's market share in either</p>
364	366
<p>1 A. Correct, assuming the truth of what I just 2 agreed to. Back in 2001 the market was pretty 3 small.</p> <p>4 Q. Okay. You can put that document aside for 5 the moment. I'm going to come back to it, but I'm 6 going to put it aside for the moment.</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 Q. Do you know who the audience of the 13 document was?</p> <p>14 A. Probably potential lenders.</p> <p>15 Q. And in putting together a document about 16 information relating to a company for potential 17 lenders one would need to be scrupulously accurate 18 about the information, correct?</p> <p>19 A. Well, I mean, if I were creating a 20 document I would try to be accurate, you know, but 21 I've seen the disclaimers in documents like this 22 that say, you know, not everything in a document -- 23 in our document is -- we can't verify that it's -- 24 the total reliability of these things. There's all 25 kinds of caveats. I assume this was done under</p>	<p>1 A. Yes.</p> <p>2 Q. And you note they acquired WFA and WEC in 3 2006, right?</p> <p>4 A. Yes.</p> <p>5 Q. And Pride in 2007; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. And Affliction in 2009; is that right?</p> <p>8 A. Yes.</p> <p>9 Q. And Strike Force in 2011; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know if they acquired any other 12 promoters?</p> <p>13 A. As I sit here I can't remember, but I 14 believe they have. I can't remember their names.</p> <p>15 Q. In the last sentence of paragraph 173 you 16 say "At the time of these acquisitions each of the 17 acquired MMA promoters was either too small to 18 appreciably change Zuffa's market share in either 19 the input or output market, was exiting the market, 20 or both"; do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. I'm trying to understand you provide two 23 different characterizations. One that the promoter 24 was too small to change Zuffa's market share in the 25 input or output market; in the other that it was</p>
365	367
<p>1 standard business practice. Deutsche Bank was 2 involved and they would have been doing -- creating 3 this in the way they would have created it for 4 another organization.</p> <p>5 Q. And they would attempt to be as accurate 6 as they possibly could be in this document, 7 correct?</p> <p>8 A. They -- they would be as accurate as it 9 was valuable to be. There's costs to being 10 accurate. I assume that they -- they did a good 11 job here.</p> <p>12 Q. It's fair to say that Deutsche Bank would 13 not want to make material misrepresentations in a 14 document like this to potential lenders, correct?</p> <p>15 A. I think that would be a bad idea.</p> <p>16 Q. All right. You can put that aside for the 17 moment.</p> <p>18 Turn to paragraph 173, please.</p> <p>19 A. Yes.</p> <p>20 Q. Here you are discussing the promoters that 21 Zuffa acquired?</p> <p>22 A. Yes.</p> <p>23 Q. And you observe that Zuffa acquired 24 several MMA promotions between 2006 and 2011; is 25 that right?</p>	<p>1 exiting the market at the time of the acquisition, 2 right?</p> <p>3 A. Yes. It's an either/or.</p> <p>4 Q. Either/or. So now I'm going to ask you 5 which explanations apply to which promotions.</p> <p>6 A. Oh, dear.</p> <p>7 Q. So WFA, did the acquisition of WFA 8 appreciably change Zuffa's market share in either 9 the input or output market?</p> <p>10 A. My recollection from our calculations 11 using Dr. Singer's data is that it did not.</p> <p>12 Q. Did the acquisition of WEC appreciably 13 change Zuffa's market share in either the input or 14 output market?</p> <p>15 A. Our calculations are on the input side and 16 my recollection is that it didn't affect any of 17 Dr. Singer's -- materially affect any of 18 Dr. Singer's share calculations.</p> <p>19 Q. It did not affect?</p> <p>20 A. I'm trying to remember, but that's my 21 recollection. It has to affect it, right, but it 22 didn't affect it much.</p> <p>23 Q. Right. You used the word "appreciably." 24 With respect to Pride, did that 25 appreciably change Zuffa's market share in either</p>

26 (Pages 364 to 367)

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 502, New York, NY 10123 1.800.642.1099

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">368</p> <p>1 the input or output market?</p> <p>2 A. Let me answer your question this way. I 3 don't recall doing this firm by firm, acquisition 4 by acquisition. We did his -- his foreclosure -- 5 so-called foreclosure shares and calculated it with 6 these firms and without those firms.</p> <p>7 Q. And when you calculated the foreclosure 8 share with all of these firms together versus a 9 calculation without all of these firms, was there 10 an appreciable change in foreclosure share?</p> <p>11 A. I think we have an exhibit to that effect 12 and we said it was not an appreciable change.</p> <p>13 Q. So all of the acquisitions together, in 14 your understanding, did not appreciably change 15 Zuffa's market share in either the input or output 16 market; is that what you're saying?</p> <p>17 A. Yes.</p> <p>18 Q. So is it fair to say that what you're 19 saying is that all of these MMA promoters that 20 Zuffa acquired were essentially insignificant as 21 competitors to Zuffa?</p> <p>22 MR. WIDNELL: Objection, form.</p> <p>23 BY THE WITNESS:</p> <p>24 A. No. I didn't do an analysis of whether 25 they were insignificant or could have been</p>	<p style="text-align: right;">370</p> <p>1 after all, you're bringing the athletes of one less 2 well-known entity under the brand name of another 3 entity. So it simply says here there -- they 4 didn't change Zuffa's market share in the neither 5 the input or the output market, appreciably change 6 the market share in either the input or output 7 market.</p> <p>8 Q. Did --</p> <p>9 A. I mean, was it a significant -- I don't 10 know what the word "significant" means in this 11 context. It was a competitor.</p> <p>12 Q. Did Strike Force have significant share of 13 the input or output markets at the time it was 14 taken over by Zuffa?</p> <p>15 A. Evidently not.</p> <p>16 Q. Did any of the rivals that Zuffa purchased 17 as identified in paragraph 173 have a significant 18 share of the input or output markets at the time 19 they were purchased?</p> <p>20 MR. WIDNELL: Objection, form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. As I said, I didn't do the calculations 23 firm by firm. They certainly weren't as big as 24 Zuffa.</p> <p>25 Q. Is it fair to say that none of the</p>
<p style="text-align: right;">369</p> <p>1 significant or anything like that. I'm just saying 2 that it doesn't affect -- including them doesn't 3 much affect Dr. Singer's calculations of his 4 so-called foreclosure.</p> <p>5 Q. So you have -- you have no opinion one way 6 or another whether, for example, Zuffa's 7 acquisition of Strike Force was the acquisition of 8 a significant competitor or an insignificant 9 competitor; am I right?</p> <p>10 MR. WIDNELL: Objection.</p> <p>11 BY THE WITNESS:</p> <p>12 A. It doesn't have a material impact on 13 Zuffa's market share in the input or output market 14 is what -- is what we say here. That's the opinion 15 I'm offering.</p> <p>16 Q. So was Strike Force a significant 17 competitor to Zuffa at the time that Zuffa 18 purchased Strike Force in 2010 in your opinion?</p> <p>19 MR. WIDNELL: Objection, form.</p> <p>20 BY THE WITNESS:</p> <p>21 A. They were -- they were a competitor and 22 competitors are often acquired. There can be 23 synergies between the two firms that make the 24 acquisition worthwhile and that are output 25 increasing and consumer welfare increasing because,</p>	<p style="text-align: right;">371</p> <p>1 competitors that Zuffa purchased that you 2 identified in paragraph 173, in your view, had been 3 able to challenge Zuffa's dominance in either the 4 input or output markets?</p> <p>5 MR. WIDNELL: Objection, form.</p> <p>6 BY THE WITNESS:</p> <p>7 A. Well, I don't know what it means to 8 challenge dominance. I've seen dominance used in 9 the context that noneconomists would use it. Zuffa 10 has a level of market share in a position in the 11 market.</p> <p>12 Q. Is it fair to say --</p> <p>13 A. It's been pretty stable over time.</p> <p>14 Q. Is it fair to say that none of the 15 promoters that Zuffa acquired, in your view, have 16 been able to successfully challenge Zuffa's market 17 share and market position that you say has been 18 stable over time in either the input or output 19 markets?</p> <p>20 MR. WIDNELL: Objection, form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. Well, it's fair to say that these acquired 23 firms did not grow to be as large as Zuffa.</p> <p>24 Q. Did any of these firms in your opinion as 25 an economist before they were purchased by Zuffa</p>

27 (Pages 368 to 371)

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 502, New York, NY 10123 1.800.642.1099

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">372</p> <p>1 present a competitive threat to the UFC? 2 A. They might have. I think all firms in 3 this market present a competitive threat to UFC. 4 Q. So when Zuffa purchased Strike Force, for 5 example, it was eliminating, in your opinion, a 6 competitive threat; is that right? 7 A. Well, no. The -- take Strike Force, for 8 example. You know, everybody in the -- if they 9 bought some small firm there's some competition 10 from that firm, that's all I'm saying. I mean, we 11 wouldn't want to say that these firms are in the 12 market and they don't compete with Zuffa. They 13 were competing for athletes, they were competing 14 for eyeballs, they were competing, and the question 15 is whether it was addressed by antitrust 16 authorities and the like is whether these 17 acquisitions materially affected competition in the 18 market. Evidently they found that they didn't. 19 So -- but these were -- these were firms operating 20 and there are always benefits and potential costs 21 of allowing acquisitions.</p> <p>22 Q. At the time that Strike Force was 23 purchased in 2010, did Strike Force, in your 24 opinion as an economist, present a significant 25 economic threat to the UFC?</p>	<p style="text-align: right;">374</p> <p>1 not profitable and doesn't do business in the 2 United States? 3 Q. Is it your opinion that Bellator has 4 substantial market share and is profitable? 5 A. It's -- it's got a substantial position in 6 the market and it seems to be surviving. 7 Q. Is it your opinion that Bellator is 8 profitable currently? 9 A. Well, it's an ongoing entity. So the 10 present discounted value of what those investors 11 think that this project is worth must be 12 positive. 13 Q. Is it your opinion that the revenues that 14 Bellator brings in in any year exceed the costs of 15 running the organization in that year? 16 A. I've not looked at the balance sheets of 17 Bellator, but given that they're still in business, 18 there must be some anticipation of positive cash 19 flow even if it's negative today. 20 Q. So you're saying that it's your 21 understanding that there's an anticipation that 22 Bellator will one day be profitable, but you don't 23 understand that Bellator's profitable today; is 24 that right?</p> <p>25 MR. WIDNELL: Objection, form.</p>
<p style="text-align: right;">373</p> <p>1 MR. WIDNELL: Objection, form. 2 BY THE WITNESS: 3 A. Not such a threat that the acquisition 4 would have -- would have materially affected 5 competition to the detriment of consumers and -- 6 and fighters.</p> <p>7 Q. Did Pride at the time it was purchased 8 present a significant economic competitive threat 9 to Zuffa at the time it was purchased? 10 A. And my answer's the same. 11 Q. Would it be the same for all of the 12 entities? 13 A. Yes. 14 Q. Is it fair to say that even if we put the 15 promoters that Zuffa acquired aside -- 16 A. Let me finish -- let me say -- I should 17 have put the word "adversely" affect competition. 18 Q. Is it fair to say, putting the promoters 19 that Zuffa acquired aside, that your report does 20 not identify a single MMA promotion other than 21 Zuffa that does business in the United States that 22 had substantial market share and was profitable? 23 MR. WIDNELL: Objection, form. 24 BY THE WITNESS: 25 A. Are we -- are we saying that Bellator's</p>	<p style="text-align: right;">375</p> <p>1 BY THE WITNESS: 2 A. Well, I'm not -- I'm not offering an 3 opinion of whether they have positive cash flow 4 today. 5 Q. When in your -- 6 A. Just as Zuffa did not have positive cash 7 flow when it was a young and nascent participant in 8 this market. 9 Q. When, in your opinion, did Bellator come 10 to have significant market share in the United 11 States? 12 A. I don't recall the time series on 13 Bellator's market share. I recall that they have 14 television contracts. They're backed by Viacom and 15 so on. 16 Q. Putting Bellator aside for the moment, can 17 you identify another MMA promotion that does 18 business in the United States that has significant 19 market share, in your opinion, and is profitable? 20 A. Well, a lot of these must be profitable. 21 King of the Cage has been around putting on dozens 22 of events every year for many years. There's a 23 long list of promoters that are -- that are doing 24 this and -- you know, the market share you're 25 referring to is very limited in its scope because</p>

28 (Pages 372 to 375)

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 502, New York, NY 10123 1.800.642.1099

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

420 1 compensation is, in part, determined by the 2 willingness of people to pay to see fighters fight? 3 A. To the extent that we're talking about 4 things that change the demand for fighters and in 5 moving along a supply curve, then greater 6 willingness to pay downstream raises the demand for 7 fighters and compensation should rise to the 8 extent -- depending on the elasticity of supply of 9 fighters. 10 Q. So it's fair to say that both fighter 11 compensation and event revenues are both, in part, 12 determined by the willingness of individuals to pay 13 to see fighters fight; is that right? 14 A. Would you -- can you read that back? 15 Q. I'll say it again. That fighter 16 compensation and event revenues are both, in part, 17 determined by the willingness of people to pay to 18 watch fighters fight; is that fair? 19 A. Yeah, subject to the conditions I gave. 20 Q. Okay. 21 Turn to paragraph 200. Now, in paragraph 22 200 you're criticizing Dr. Singer's damages 23 analysis in part, and in particular in the fourth 24 [REDACTED]	422 [REDACTED] 3 Q. So, in your view, the challenged conduct 4 alters the amount of UFC's revenues and that would 5 in turn alter the total amount of dollars that 6 would be paid to UFC fighters in the but-for world, 7 right? 8 A. You're connecting things from all other 9 the place now. 10 Q. It's my job. 11 A. I know, and I'm -- my job is to listen 12 carefully. 13 Q. It is. 14 A. Zuffa's producing a product and it's 15 putting on what they call shows, and these -- the 16 challenged conduct here or the restrictions enable 17 them to increase the valuable of those shows and 18 produce a more valuable product. So when we talk 19 about holding revenues constant, you can't take -- 20 you can't take one piece away and leave the other 21 piece intact. 22 Q. So, in other words, when you're 23 determining damages you can't just assume that the 24 revenues would be what they were in the actual 25 world because the revenues, in your view, might be
421 1 [REDACTED]	423 1 less, right? 2 A. Yeah. If we took these things away from 3 the entire industry, the whole industry might be 4 less valuable. 5 Q. So it's not appropriate, in your view, to 6 hold revenues constant because the challenged 7 conduct alters the amount of UFC's revenues, right? 8 A. I'm trying to figure out where you're 9 going here, but that's a fact. If you're 10 holding -- he's holding revenues constant. 11 Q. Okay. And, in your view, it's not 12 appropriate in evaluating the total possible 13 damages to fighters in this case to use the amount 14 of revenues that UFC actually brought in in the 15 actual world, right? 16 MR. WIDNELL: Objection, form. 17 BY THE WITNESS: 18 A. Yes. Let me put it another way. You 19 referred to the pie yesterday and changing the 20 contract restrictions doesn't mean -- just mean 21 that the same pie is divided up in a different way. 22 Q. Okay. So your view is that if in the 23 but-for world we would expect the UFC to bring in 24 lower levels of revenues from their events, that 25 would likely lead to lower athlete compensation,

40 (Pages 420 to 423)

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 502, New York, NY 10123 1.800.642.1099

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">424</p> <p>1 right? 2 A. Depending on how everything else plays 3 out, yeah. 4 Q. I mean, you say in paragraph 200 -- we 5 looked at this before in the same paragraph on page 6 [REDACTED]</p> <p>9 Q. Okay. So just so I understand, it's your 10 view that in computing damages in this case the 11 appropriate pool of total event revenues is the 12 amount of event revenues that the UFC would have 13 brought in in the but-for world, not the actual 14 world; am I right about that? 15 A. Well, I mean, I don't want you to sneak in 16 some sort of back-handed endorsement of the way 17 Dr. Singer's performing the whole exercise, that 18 it's based on some division of some share of 19 revenues because I think that's a major critical 20 mistake.</p> <p>21 Q. All right. I'm not trying to sneak that 22 in. 23 A. Well, I just -- but I've got to be careful 24 here because you're getting me to endorse some 25 concept that's -- you know, endorsing some aspect</p>	<p style="text-align: right;">426</p> <p>1 constant in the actual world that is not an 2 appropriate assumption? 3 A. Yes. 4 Q. Okay. And the reason why that's not 5 appropriate is because what an economist should do 6 in computing damages in an antitrust trust is take 7 into account all of the differences that would 8 occur in the but-for world, including the total 9 amount of revenues available to pay damages, right? 10 A. Well, you're assuming -- you're assuming 11 the appropriateness in that statement of 12 Dr. Singer's damage calculation that's based on a 13 share of revenues, and I'm -- so I'll just put it 14 in the context of his damage calculation, which is 15 just wrong, even within that context if you assumed 16 arguendo it was a way to calculate damages, you'd 17 still have to take into account that the world's 18 going to be different when those contract 19 restrictions are removed. 20 Q. Okay. Let's assume that we're talking 21 about an economist that didn't use share in his or 22 her damages analysis. They used wage level. So we 23 don't have the share problem that I think we're 24 getting hung up on. In that situation in 25 attempting to compute the effect of challenged</p>
<p style="text-align: right;">425</p> <p>1 of a -- of a -- of an inappropriate procedure. But 2 the only point I'm making here is that the value 3 produced is going to be different in the but-for 4 world than in the world we're in, and -- because, 5 remember, my opinion is there aren't any damages. 6 So what it means to calculate those damages by the 7 procedures that Dr. Singer's using is kind of a -- 8 let's just put it this way, a very vague concept. 9 Q. I understand you have your critiques of 10 Dr. Singer's analysis. I'm just trying to 11 understand the principles behind this particular 12 criticism, and as I understand it the particular 13 criticism is that to the extent Dr. Singer is 14 assuming that revenues are constant in the actual 15 world, that is not an appropriate assumption 16 because what he should be focused on in computing 17 damages are the revenues in the but-for world; is 18 that right? 19 A. Let's just say that you -- if I read back 20 your entire sentence there, it was kind of long, 21 and I just stopped with "because" -- I put a period 22 before the "because" and if you'll read back what 23 that says, I think I can agree with that 24 statement. 25 Q. Dr. Singer is assuming that revenues are</p>	<p style="text-align: right;">427</p> <p>1 conduct on compensation one would need to assess 2 the total amount of revenues in the but-for world, 3 not the actual world; is that right? 4 MR. WIDNELL: Objection, form. 5 BY THE WITNESS: 6 A. Now I don't know -- where do revenues come 7 into this now? We just took it out of the 8 left-hand side. Maybe -- you know, if I wanted to 9 do a proper analysis I might have to compute the 10 market equilibrium in a world where revenues have 11 changed, but for the purposes of some -- if all 12 we're changing is the regression and saying we're 13 going to put compensation on the left-hand side or 14 the log of compensation on the left-hand side 15 rather than the share of revenues of -- the wage of 16 an athlete divided by event revenue, well, now 17 revenues aren't in the model, correct? They just 18 disappeared. 19 Q. Well, let's say that the regression 20 produced a percentage by which compensation was 21 reduced as between the actual world and the but-for 22 world. That's something that could happen with a 23 regression, right? 24 MR. WIDNELL: Objection, form. 25 BY THE WITNESS:</p>

41 (Pages 424 to 427)

DAVID FELDMAN WORLDWIDE, INC.
 450 Seventh Avenue - Ste 502, New York, NY 10123 1.800.642.1099

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

428	430
<p>1 A. Let's suppose we had a case that -- let me 2 see if I can help you out or you can help me out or 3 we can help each other out.</p> <p>4 Q. Good.</p> <p>5 A. Suppose there's a regression of wages on 6 some all-agreed-upon conduct indicator. Okay? So 7 there's -- and there's a before and after.</p> <p>8 Q. Okay.</p> <p>9 A. And we say that wages were 2 percent lower 10 controlling for other stuff in the conduct period, 11 okay, and we're not doing anything about the -- 12 forget critiques of whether the conduct -- and 13 suppose it was a really good controlled experiment 14 before and after.</p> <p>15 Q. Fair enough.</p> <p>16 A. Then there's a 2 percent impact of the 17 conduct, okay, which, as I just said, we're all 18 going to agree that this is right -- the right way 19 to measure the conduct.</p> <p>20 Q. Understood.</p> <p>21 A. Then one would need the stipulation along 22 with that that the practices in question didn't 23 have some offsetting impact that would have raised 24 pay because -- but we have a before and after 25 that's the conduct period. So we've really taken</p>	<p>1 A. For the experiment we just did, you know, 2 we controlled for growth and other stuff and it was 3 just the -- I think if we understand each other, 4 it's a 2 percent reduction in wages. So give them 5 2 percent of their wages.</p> <p>6 Q. Let's say that the conduct in question had 7 another effect -- strike that. I get it. I'll 8 move on.</p> <p>9 Paragraph 108, please. You state in 10 paragraph 108 on page 47 -- I think I have the 11 wrong paragraph here. Oh, I mean paragraph 109. 12 You quote or paraphrase something from 13 Dr. Singer. You say "As Dr. Singer notes, athletes 14 value the opportunity to develop their careers by 15 fighting against highly-ranked opponents and 16 audiences are drawn to fights among highly ranked 17 opponents"; do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Do you agree with Dr. Singer's 20 observation?</p> <p>21 A. That people want to fight highly ranked 22 opponents?</p> <p>23 Q. Yes.</p> <p>24 A. Well, they want to fight highly-ranked 25 opponents when they think they're ready to fight</p>
429	431
<p>1 that into account.</p> <p>2 Q. So let's say in your example with the 3 well-specified regression showing a 2 percent 4 decrease in wages after when compared to before 5 that revenues were different in the after period 6 and the before period. Would you multiply the 2 7 percent times the amount of revenues that you 8 thought would be existing in the but-for world or 9 the amount of revenues that would be existing in 10 the actual world?</p> <p>11 MR. WIDNELL: Objection, form.</p> <p>12 BY THE WITNESS:</p> <p>13 A. Okay. Well, see, you know, I didn't 14 succeed in getting us on the same page because you 15 just multiplied by revenues. So revenues just came 16 sneaking in through the back door. It was a 17 2 percent change in their pay, their compensation, 18 their salary.</p> <p>19 Q. Okay. I understand.</p> <p>20 A. Revenues is gone.</p> <p>21 Q. All right. Understood. Okay. So do you 22 multiply, then, by the total amount of compensation 23 paid to the workers in the actual world or the 24 total amount of compensation you believe would have 25 been paid to the workers in the but-for world?</p>	<p>1 highly-ranked opponents.</p> <p>2 Q. And are audiences drawn to fights among 3 highly-ranked opponents?</p> <p>4 A. I think -- I think ratings are higher. I 5 think there was some evidence that ratings are 6 higher when highly-ranked people fight against each 7 other.</p> <p>8 Q. Do you agree that MMA fighters value the 9 ability to develop their careers by fighting 10 against highly-ranked opponents when they're ready 11 to fight them?</p> <p>12 A. Yeah. I think that's why they sign up. 13 That's one of the reasons they sign up.</p> <p>14 Q. Is it fair to say that a fighter can't -- 15 cannot advance in the rankings unless that 16 fighter's able to fight other fighters that are 17 ranked higher than them, right?</p> <p>18 MR. WIDNELL: Objection, form.</p> <p>19 BY THE WITNESS:</p> <p>20 A. I don't think that's literally true, but 21 you don't have to fight somebody higher than you to 22 move up.</p> <p>23 Q. But in order to substantially move up in 24 the rankings, all things equal, it would be better 25 for you to fight higher ranked fighters, correct?</p>

42 (Pages 428 to 431)

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 502, New York, NY 10123 1.800.642.1099

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">432</p> <p>1 MR. WIDNELL: Objection, form. 2 BY THE WITNESS: 3 A. Since I don't know exactly how the ratings 4 or the rankings happen, let's assume they're like 5 college football rankings, then you take into 6 account the types of opponents you've had and how 7 you did and somebody has a formula that tries to 8 take that into account. Same thing with golf 9 rankings and all sorts of things.</p> <p>10 Q. All things equal, consumers will be 11 willing to pay more to see highly-ranked opponents 12 fight than lower-ranked opponents fight; is that 13 fair?</p> <p>14 MR. WIDNELL: Objection, form. 15 BY THE WITNESS: 16 A. In every instance, no, but on average 17 probably yes.</p> <p>18 Q. Higher ranked fighters, all things equal, 19 generate more revenues when they fight than 20 lower-ranked fighters, correct?</p> <p>21 MR. WIDNELL: Objection, form. 22 BY THE WITNESS: 23 A. Not always, but on average that's probably 24 true.</p> <p>25 Q. Turn to paragraph 96, please. In the</p>	<p style="text-align: right;">434</p> <p>1 platform that has been successful in attracting the 2 top athletes and that complementarity plays a 3 role.</p> <p>4 Q. How do you define "significant share" as 5 you use that term in this sentence?</p> <p>6 A. All other things equal, a firm that is 7 attracting the top athletes will see its share 8 among the top athletes rise.</p> <p>9 Q. And that's because fighters generally have 10 an interest in competing against the best fighters, 11 right?</p> <p>12 A. Well, that's part of it, but the 13 complementarity is there's more energy created when 14 you put the good fighters against each other. So 15 the -- the customers like that too.</p> <p>16 Q. And those are the fights that would likely 17 lead to career advancement and higher compensation 18 ultimately, correct?</p> <p>19 MR. WIDNELL: Objection, form. 20 BY MR. CRAMER:</p> <p>21 Q. The ones with higher energy.</p> <p>22 A. Broadly speaking.</p> <p>23 Q. Broadly speaking, yes?</p> <p>24 A. Broadly speaking, if I -- if I'm 25 successful against higher-ranked people, I will</p>
<p style="text-align: right;">433</p> <p>1 first sentence after the dash you state "There is a 2 natural tendency for a leading promoter to attract 3 a significant share of the top athletes"?</p> <p>4 A. Yes.</p> <p>5 Q. "This follows," you say, "from the 6 complimentarity of athlete talents in producing 7 high-quality bouts" --</p> <p>8 A. That's the point we just made.</p> <p>9 Q. -- "and the desire among athletes to fight 10 against the best"; do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And you agree with that?</p> <p>13 A. Yes.</p> <p>14 Q. Can you please explain the natural 15 tendency for a leading promoter to attract a 16 significant share of the top athletes. What does 17 that mean?</p> <p>18 A. It means that athletes -- their talents 19 are complementary, that the good athletes want to 20 be in the places where the -- where the other good 21 athletes are so they can fight them. And then 22 it's -- it's kind of a feedback system that you 23 attract some of the good athletes, they fight well, 24 it makes it more attractive for the other good 25 athletes, and so on. So Zuffa kind of runs a</p>	<p style="text-align: right;">435</p> <p>1 probably advance more and get paid more and so on, 2 as I understand the process.</p> <p>3 Q. You can put that paragraph aside.</p> <p>4 Would you agree with me that by 5 restricting fighter mobility used the challenged 6 contracts Zuffa's made it more difficult for other 7 MMA promotions to access UFC's top fighters, all 8 things equal?</p> <p>9 A. No.</p> <p>10 Q. Are you aware that Zuffa and banks working 11 with Zuffa have seen the challenged contracts and 12 describe the challenged contracts as barriers to 13 entry to rivals?</p> <p>14 A. I think I know what you're -- to what you 15 are referring and I wouldn't characterize it that 16 way.</p> <p>17 Q. All right. Would you take a look at what 18 has been marked as Exhibit 12. We marked it 19 earlier today. It was in the pile in front of you.</p> <p>20 A. Exhibit --</p> <p>21 Q. 12. It is the --</p> <p>22 A. It's the Deutsche Bank?</p> <p>23 Q. Correct.</p> <p>24 A. What page do you want?</p> <p>25 Q. I would like you to turn to page 7 of the</p>

43 (Pages 432 to 435)

DAVID FELDMAN WORLDWIDE, INC.
 450 Seventh Avenue - Ste 502, New York, NY 10123 1.800.642.1099

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL



44 (Pages 436 to 439)

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 502, New York, NY 10123 1.800.642.1099

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

45 (Pages 440 to 443)

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 502, New York, NY 10123 1.800.642.1099

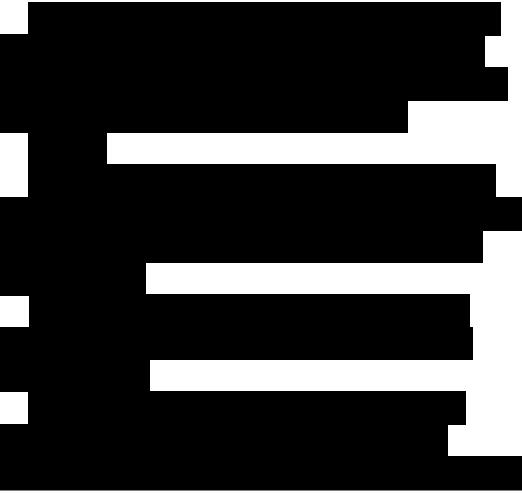
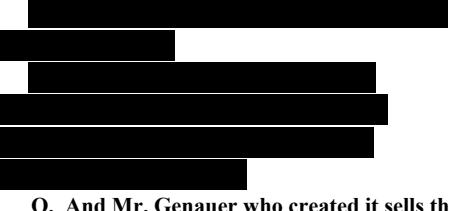
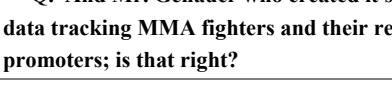
ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

	444		446
1	then what's the other footnote?		
2	Q. 407.		
3	A. Okay. Somewhere on there -- there it is.		
4	Okay. Same quote. It appears twice.		
5	Q. Okay.		
6	A. Yes.		
7	Q. So you -- you believe this document is a		
8	reliable source of information about Zuffa; is that		
9	fair?		
10	MR. WIDNELL: Objection, form.		
11	BY THE WITNESS:		
12	A. I believe that Dr. Singer quoted it in the		
13	context that it was used by him.		
14	Q. And you quote from it too, right?		
15	A. Well, I'm quoting -- didn't he quote that?		
16	Q. I'm sure that he did, and you did as well.		
17	A. That's his -- that's his quote. So I'm		
18	quoting him.		
19	Q. All right. Do you believe that this		
20	document is a reliable source of information		
21	regarding Zuffa's business practices?		
22	A. I think it's a reliable source of		
23	information for that quote that was provided by		
24	Dr. Singer.		
25	Q. Okay.		
	445		447
1	A. What -- what part are you pointing to?		
2	And then we can talk about it.		
13	Q. You can put that aside.		
14	A. Okay.		
15	Q. Turn to footnote 233 on page 72 of your		
16	report.		
17	A. Footnote 233?		
18	Q. Yeah. In the first sentence of footnote		
23	A. Hold on. Let me read it in context.		
24	Okay?		
25	(Witness reviewing document.)		

46 (Pages 444 to 447)

DAVID FELDMAN WORLDWIDE, INC.
 450 Seventh Avenue - Ste 502, New York, NY 10123 1.800.642.1099

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

	476		478
1	high-ranked -- high-quality people or low-ranked	1	Q. Yeah. Can you identify any MMA promoter
2	quality people, but the profession would become	2	that was not in the FightMetric database that had
3	more attractive relative to other professions.	3	or has a material share of the MMA promotion
4	Q. And, all things equal, if you therefore	4	business?
5	increase fighter compensation relative to other	5	A. Well, if I don't have anybody in here,
6	sports, that would improve the quality of MMA for	6	we've talked about the identities before, but I
7	consumers, right?	7	can't remember.
8	MR. WIDNELL: Objection, form.	8	Q. So sitting here today, you cannot identify
9	BY THE WITNESS:	9	a single MMA promoter with a material share of the
10	A. There would be some effect there, yeah.	10	MMA market that was not in the FightMetric
		11	database; is that right?
		12	MR. WIDNELL: Objection, form.
		13	BY THE WITNESS:
		14	A. I don't recall the names of the promoters
		15	that were not in there. I didn't keep track of
		16	that.
		23	
		24	
		25	
			Q. And Mr. Genauer who created it sells the
			data tracking MMA fighters and their records to MMA
			promoters; is that right?
	477		479
		1	A. That's my recollection.
		2	Q. Did you speak to Mr. Genauer --
		3	A. No.
		4	Q. -- in the course of your work?
		5	A. No.
		10	BY THE WITNESS:
11	MR. CRAMER: For the court reporter there	11	A. To keep track of perform -- my
12	have been two words, FightMetric,	12	recollection is to keep track of performance of
13	F-I-G-H-T-M-E-T-R-I-C, and Fight Matrix, F-I-G-H-T,	13	athletes in the octagon.
14	M-A-T-R-I-X.	14	Q. And MMA promoters use the FightMetric
15	THE REPORTER: Thank you.	15	database in tracking fighters as part of the
16	MR. CRAMER: You're welcome.	16	regular course of their businesses, as far as you
17	BY MR. CRAMER:	17	understand it; is that right?
18	Q. Can you identify a single MMA promoter	18	MR. WIDNELL: Objection, form.
19	that you believe was excluded from the FightMetric	19	BY THE WITNESS:
20	database that has or had a material share of the	20	A. Some do and some don't.
21	MMA promotion business?	21	MR. WIDNELL: Misstates.
22	A. I'm sorry.	22	BY MR. CRAMER:
23	MR. WIDNELL: Objection, form.	23	Q. In paragraph 211 you quote Mr. Genauer,
24	BY THE WITNESS:	24	we've got a declaration from him; is that right?
25	A. I'm sorry. Could you say that again.	25	A. Well, I think this is a -- I can't

54 (Pages 476 to 479)

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 502, New York, NY 10123 1.800.642.1099

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">496</p> <p>1 Q. Well, you list some of them in the next 2 sentence. 3 A. Yeah. 4 Q. There's the horizontal acquisitions, the 5 counter programming; do you see that? 6 A. Yeah. 7 Q. And what you're saying is that the -- at 8 best the foreclosure analysis only considers the 9 impact from the challenged -- contractual 10 restrictions in the par contracts; is that right? 11 A. Yeah. 12 Q. All right. You can put that aside for a 13 minute. 14 Who's Joe Silva? 15 A. Isn't Joe Silva the -- 16 Q. Well, I'll refresh your recollection. 17 Turn to paragraph 61. 18 A. Yeah. There are actually two people in 19 this case with the last name of Silva. 20 Q. That's true. There's a fighter. Turn to 21 paragraph -- 22 A. What page? 23 Q. Paragraph 61, footnote 9 -- 94. 24 A. Paragraph 61, footnote 94. 25 Q. Right. In footnote 94 you cite the</p>	<p style="text-align: right;">498</p> <p>1 Zuffa. 2 THE REPORTER: One at a time, please. 3 BY MR. CRAMER: 4 Q. Let me ask the question again. Thank you. 5 Are you aware that Mr. Silva, Joe Silva worked for 6 the UFC prior to Zuffa's acquisition of the UFC? 7 A. I think I agreed to that. 8 Q. Okay. All right. And in paragraph 61 you 9 are citing Joe Silva as an authority about the 10 types of athletes necessary to run a successful MMA 11 promotion; is that fair? 12 MR. WIDNELL: Objection, form. 13 BY THE WITNESS: 14 A. It's more about a process of identifying 15 those athletes. 16 Q. And you believe he's a knowledgeable 17 resource on that topic? 18 A. He's a participant. 19 Q. And do you believe he's a reliable source 20 regarding the quality of MMA talent? 21 A. He's reliable for -- 22 MR. WIDNELL: Objection, form. 23 BY THE WITNESS: 24 A. -- for the purposes that I used here. 25 Q. And one of the purposes for which you used</p>
<p style="text-align: right;">497</p> <p>1 deposition of Joe Silva, right? 2 A. Yes. 3 Q. Does it refresh your recollection that he 4 was the matchmaker for Zuffa? 5 A. Yes, it does. 6 Q. Does it sound right that he worked for 7 Zuffa from about 2001 to 2016? 8 A. That's familiar, but if you asked me to 9 verify that those are the dates, don't do that. 10 Q. Okay. Are you aware that he also 11 negotiated fighter contracts with some of the 12 fighters? 13 A. Yes. 14 Q. Are you aware that he worked for Zuffa 15 prior to the -- worked for the UFC prior to the 16 UFC's acquisition of Zuffa? 17 A. So he was carried over as an element of 18 management. 19 Q. Yes. 20 A. Yes. 21 MR. WIDNELL: I'm sorry. You mean prior 22 to Zuffa's acquisition of UFC? 23 MR. CRAMER: Yes. 24 THE WITNESS: Isn't that what he said? 25 MR. WIDNELL: He said UFC acquisition of</p>	<p style="text-align: right;">499</p> <p>1 him here was what it takes to successfully run an 2 MMA promotion; is that right? 3 A. Yes. 4 Q. Turn to paragraph 76, please. In footnote 5 129 you'll see that you -- here again is the 6 deposition of Joe Silva, you cite him again; is 7 that right? 8 A. Yes. 9 Q. And you cite him here when discussing 10 Zuffa's competition for what you call, 11 quote/unquote, named fighters; is that right? 12 MR. WIDNELL: I'm sorry. What are you 13 referring to? 14 BY MR. CRAMER: 15 Q. The last sentence of paragraph 76 says 16 "Since Zuffa's inception it has been outbid for 17 what Joe Silva called 'named fighters' by other MMA 18 promotions"; do you see that? 19 A. Yes. Excuse me. 20 Q. And you cite Mr. Silva's deposition for 21 that proposition; is that right? 22 A. Yes. 23 Q. Would you agree that Mr. Silva's a 24 reliable source regarding MMA fighter talent 25 acquisition?</p>

59 (Pages 496 to 499)

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 502, New York, NY 10123 1.800.642.1099

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

	500	
1	A. He engaged in that process. So he's a 2 better source than I would be.	1 BY THE WITNESS: 2 A. He's -- he provides information about 3 that.
3	Q. Well, he worked at the UFC for 16 years, 4 right? He's a pretty good source, isn't he?	4 Q. And -- 5 A. And he's -- you know, he's got insights 6 about that that other people would not have.
5	A. Yeah. He's got experience in the 6 business.	7 Q. And he's one of the people you would turn 8 to if you wanted to learn about UFC's practices 9 with regard to negotiations with fighters over 10 compensation; is that right?
11	Q. Turn to paragraph 244, please. You'll 12 notice that in both paragraph 244 in footnote 351 13 and in paragraph 245 in footnote 355 you cite 14 Mr. Silva again; do you see that?	11 A. Yeah, one of them. 12 Q. Turn to paragraph 303, please. In the [REDACTED]
15	A. Yes.	
16	Q. And you cite him when discussing the 17 number of fighters Zuffa had under contract; is 18 that right?	
19	A. That's what this paragraph deals with.	
20	Q. And you would agree that Mr. Silva's a 21 reliable source regarding the size and management 22 of the UFC roster; is that fair?	
23	MR. WIDNELL: Objection, form.	
24	BY THE WITNESS:	
25	A. Let me read here. (Witness reviewing document.)	
	BY THE WITNESS:	
1	A. He's -- he's -- Dr. Singer's assertion is 2 contradicted by Mr. Silva's deposition.	
	501	
1	Q. So presumably you believe that 2 Dr. Silva -- I mean, Mr. Silva is a reliable source 3 regarding MMA's business practices, in particular 4 regarding the size and management of UFC's 5 roster?	[REDACTED]
6	A. He provides information about those 7 things.	[REDACTED]
8	Q. And you believe it's a reliable -- it's 9 reliable information, otherwise you wouldn't have 10 cited it, correct?	[REDACTED]
11	A. It's inconsistent with Dr. Singer's 12 opinions.	[REDACTED]
13	Q. And the only way that facts in the world 14 can be useful to contradict Dr. Singer's opinions 15 is if you believe that the facts that you're 16 relying upon are reliable, right?	[REDACTED]
17	MR. WIDNELL: Objection, form.	[REDACTED]
18	BY THE WITNESS:	[REDACTED]
19	A. They are informative as to how this 20 business runs.	[REDACTED]
21	Q. Is it fair to say that Mr. Silva is a 22 reliable source on the UFC's practices with regard 23 to negotiations with fighters over compensation, a 24 practice that he engaged in for over 16 years?	[REDACTED]
25	MR. WIDNELL: Objection, form.	[REDACTED]

60 (Pages 500 to 503)

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 502, New York, NY 10123 1.800.642.1099